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8 UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SWINOMISH INDIAN TRIBAL
COMMUNITY, a federally recognized Indian
11 tribe,

12 Plaintiff,

13 v.

14 DEPARTMENT OF THE INTERIOR, and its
component BUREAU OF INDIAN AFFAIRS

15 Defendant.
16

NO.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

17 I. INTRODUCTION

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19 1.1 This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C.
20 §552 *et seq.*, for declaratory, injunctive, and other appropriate relief. Plaintiff Swinomish
21 Indian Tribal Community ("Tribe") seeks the immediate identification and release of agency
22 records improperly withheld by Defendant Department of the Interior ("DOI") and its
23 component Bureau of Indian Affairs ("BIA") (together, the "Agency").

24 1.2 The Tribe submitted a FOIA request to the Agency in October, 2014 for
25 fourteen categories of agency records. The Agency assigned the Tribe's FOIA Request
26 Tracking No. BIA-2015-00163. The Agency issued an untimely and insufficient response to
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1 the Tribe's FOIA request in May, 2015 by releasing nine documents that were partially
2 responsive to only one of the fourteen categories of agency records requested by the Tribe.

3 1.3 The Tribe requires the records at issue in order to meaningfully and timely
4 consult with and provide comments to the Agency as part of required Government-to-
5 Government consultation relating to a proposed Major Federal Action which has the potential
6 to cause significant adverse effects on the Tribe. The Agency has improperly failed to conduct
7 an adequate search for documents responsive to the Tribe's request, has withheld the requested
8 agency records, and has repeatedly violated its clear statutory obligations under FOIA.

10 1.4 The Tribe seeks, *inter alia*, a declaratory judgment that the Agency is in
11 violation of FOIA and injunctive relief ordering the Agency to immediately comply with
12 FOIA by conducting an adequate search for and releasing the agency records sought in the
13 Tribe's FOIA request. In support thereof, Plaintiff alleges as follows:

15 II. PARTIES

16 2.1 Plaintiff Swinomish Indian Tribal Community is a federally recognized Indian
17 tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C.
18 §476, which occupies the Swinomish Indian Reservation located in Skagit County,
19 Washington.

21 2.2 Defendant Department of the Interior is a Department of the Executive Branch
22 of the United States Government and is an agency within the meaning of 5 U.S.C. §552(f)(1).
23 The Bureau of Indian Affairs is one of its components.

25 III. JURISDICTION AND VENUE

26 3.1 This Court has subject matter and personal jurisdiction under 5 U.S.C.
27 §552(a)(4)(B), and also has federal question jurisdiction under 28 U.S.C. §1331.

3.2 Venue is proper under 5 U.S.C. §552(a)(4)(B) because the Tribe resides and has its principal place of business in this district.

IV. FACTUAL ALLEGATIONS

4.1 The Tribe submitted a FOIA request to the Agency on October 16, 2014.

4.2 The Tribe urgently requires the records at issue in order to meaningfully and timely consult with and provide comments to the Agency as part of required Government-to-Government consultation relating to a proposed Major Federal Action which has the potential to cause significant adverse effects on the Tribe.

4.3 The Tribe's FOIA request sought fourteen categories of agency records. A copy of the Tribe's request is attached as Exhibit A.

4.4 On October 29, 2014, the Agency asked the Tribe to clarify its FOIA request by providing a more detailed and narrower description of the records sought.

4.5 On November 20, 2014, the Tribe responded to the Agency request for clarification by providing a narrower and extremely detailed description of each of the fourteen categories of records sought, as well as the Tribe's thoughts on where and in whose possession those records might be located. For example, the Tribe's clarified FOIA request identified and specifically requested by name a number of documents listed in the References section of certain Agency environmental studies for the proposed Major Federal Action. The Tribe's November 20 response also identified the environmental studies by name.

4.6 Once the Agency receives a FOIA request, it must respond within 20 working days. 5 U.S.C. §552(a)(6)(A)(i); 43 C.F.R. §2.16. At a minimum, the response must contain the Agency's determination whether to comply with (for example, grant, partially grant, or

1 deny) the request and notice of the requesting party's right to appeal the Agency's
2 determination. *Id.*

3 4.7 The Agency did not respond to the Tribe's clarified FOIA request within 20
4 working days. It also did not provide written notice that it had extended the basic time limit
5 for responding.

6 4.8 Over the next six months, the Tribe communicated with the BIA Northwest
7 Regional Office or the Office of the Regional Solicitor in Portland, Oregon over a dozen times
8 regarding the Tribe's need for the requested records in order to engage in meaningful and
9 timely Government-to-Government consultation relating to the proposed Major Federal Action
10 and regarding the Agency's continued failure to respond timely to the Tribe's FOIA request.

11 4.9 On May 19, 2015, the Agency finally responded to the Tribe's FOIA request,
12 but the response was insufficient. One example of the Agency's insufficient response is the
13 Agency's release of only nine documents, and these nine documents were partially responsive
14 to only one of the fourteen categories of agency records requested by the Tribe. Another
15 example of the Agency's insufficient response is the Agency's failure to produce, or disclose
16 and claim an exemption with respect to, the documents listed in the References section of the
17 Agency environmental studies which the Tribe identified and specifically requested by name.
18 The Agency response did not indicate that additional responsive records would be released at a
19 later time and explicitly stated that the Tribe had the right to appeal the Agency's decision.
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22 4.10 On June 12, 2015, the Tribe timely appealed the Agency's response to the
23 Tribe's FOIA request.

24 4.11 The Agency must respond to a FOIA appeal within 20 working days by
25 notifying the appealing party of the Agency's determination either to uphold the denial of the
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1 request for records in whole or in part or to release the withheld records. 5 U.S.C.
2 §552(a)(6)(A)(ii); 43 C.F.R. §2.62. In "unusual circumstances," the Agency may delay its
3 response to a FOIA request or appeal, but the Agency must provide notice to the requesting
4 party and must also provide "the date on which a determination is expected to be dispatched."
5 5 U.S.C. §552(a)(6)(B); 43 C.F.R. §2.62.
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7 4.12 The Agency did not respond to the Tribe's FOIA appeal within 20 working
8 days, did not notify the Tribe of an extension based on unusual circumstances, and in fact did
9 not even acknowledge receipt of the Tribe's FOIA appeal. As a result, the Tribe's FOIA
10 appeal has been constructively denied and the Tribe is deemed to have exhausted its
11 administrative remedies. 5 U.S.C. §552(a)(6)(C)(i).
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13 4.13 When the Tribe had not received a response to its FOIA appeal by July 15,
14 2015, the Tribe informed the Agency FOIA Appeals Office in writing that the Tribe had not
15 received a response or acknowledgment regarding the FOIA appeal, that because the Tribe
16 requires the requested documents to engage in meaningful Government-to-Government
17 consultation and because timely and meaningful consultation on the Major Federal Action is
18 imperative, if the Tribe had not received a response to the October 16, 2014 FOIA request and
19 subsequent appeal that provided all documents by July 29, the Tribe would have no choice but
20 to treat its appeal as having been denied and to file a request for relief in U.S. District Court.
21

22 4.14 The Tribe has not received any response to or acknowledgement of either its
23 June 12, 2015 appeal or its July 15, 2015 follow-up letter, and therefore files this request for
24 judicial relief.
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1 4.15 This Court has jurisdiction, upon receiving a complaint, to "enjoin the agency
2 from withholding agency records and to order the production of any agency records
3 improperly withheld from the complainant." 5 U.S.C. §552(a)(4)(B).

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5 **V. FIRST CLAIM FOR RELIEF**

6 **Violation of FOIA for Failure to Make Records Promptly Available**

7 5.1 The Tribe hereby incorporates by reference the allegations contained in the
8 preceding paragraphs of this Complaint.

9 5.2 The Tribe has a statutory right under FOIA, 5 U.S.C. §552 *et seq.*, to the agency
10 records requested.

11 5.3 Over eight months have passed since the Tribe submitted its clarified FOIA
12 request and the Agency has failed to make the vast majority of the agency records sought in
13 the Tribe's FOIA request promptly available.

14 5.4 No legal basis exists for the Agency's failure to make the requested agency
15 records promptly available to the Tribe.

16 5.5 The Tribe has exhausted its administrative remedies with respect to its FOIA
17 request.

18 5.6 The Agency's failure to make promptly available the agency records sought by
19 the Tribe's FOIA request violates FOIA, 5 U.S.C. § 552(a)(3)(A), and the Agency's internal
20 FOIA regulations, 43 C.F.R. Part 2 *et seq.*

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22 **VI. SECOND CLAIM FOR RELIEF**

23 **Violation of FOIA for Failure to Respond Timely to Request**

24 6.1 The Tribe hereby incorporates by reference the allegations contained in the
25 preceding paragraphs of this Complaint.
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6.2 The Tribe has a statutory right under FOIA, 5 U.S.C. §552 *et seq.*, to the agency records requested.

6.3 Over eight months have passed since the Tribe submitted its clarified FOIA request and the Agency has failed to respond timely to the Tribe's FOIA request.

6.4 No legal basis exists for the Agency's failure to respond timely to the Tribe's FOIA request.

6.5 The Tribe has exhausted its administrative remedies with respect to its FOIA request.

6.6 The Agency's failure to respond timely to the Tribe's FOIA request violates FOIA, 5 U.S.C. §552(a)(6)(A)(i), and the Agency's internal FOIA regulations, 43 C.F.R. §2.16.

VII. THIRD CLAIM FOR RELIEF

Violation of FOIA for Failure to Release Records and Improper Withholding

7.1 The Tribe hereby incorporates by reference the allegations contained in the preceding paragraphs of the Complaint.

7.2 The Tribe has a statutory right under FOIA, 5 U.S.C. §552 *et seq.*, to the agency records requested.

7.3 The Agency has failed to release and has improperly withheld agency records sought in the Tribe's FOIA request by 1) improperly invoking FOIA exceptions; 2) failing to provide reasonably segregable portions of withheld documents; and 3) failing to conduct a "foreseeable harm analysis" with respect to withheld documents.

7.4 No legal basis exists for the Agency's failure to release the requested agency records to the Tribe.

1 7.5 The Tribe has exhausted its administrative remedies with respect to its FOIA
2 request.

3 7.6 The Agency's failure to release and improper withholding of agency records
4 sought in the Tribe's FOIA request violates FOIA, 5 U.S.C. § 552(a) and the Agency's internal
5 FOIA regulations, 43 C.F.R. §2.21.
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7 **VIII. FOURTH CLAIM FOR RELIEF**

8 **Violation of FOIA for Failure to Conduct an Adequate Search**

9 7.1 The Tribe hereby incorporates by reference the allegations contained in the
10 preceding paragraphs of the Complaint.
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12 7.2 The Tribe has a statutory right under FOIA, 5 U.S.C. §552 *et seq.*, to the agency
13 records requested.

14 7.3 The Agency failed to comply with FOIA in responding to the Tribe's request by
15 failing to conduct a reasonable or adequate search for responsive agency records, and further
16 failed to comply with FOIA when it failed to provide any records responsive to categories 1-13
17 of the Tribe's October 16, 2014 FOIA request.
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19 7.4 The Tribe has exhausted its administrative remedies with respect to its FOIA
20 request.

21 7.5 The Agency's failure to conduct a reasonable or adequate search of agency
22 records for responsive documents sought in the Tribe's FOIA request violates FOIA, 5 U.S.C.
23 §552(a)(3), and the Agency's internal FOIA regulations, 43 C.F.R. §2.21, as does the
24 Agency's failure to produce any records responsive to categories 1-13 of the Tribe's October
25 16, 2014 FOIA request.
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IX. RELIEF REQUESTED

The Tribe requests that the Court grant the following relief:


A. A declaratory judgment that the Agency has violated FOIA;

B. An injunction ordering the Agency to conduct adequate searches to identify all agency records responsive to the Tribe's FOIA request, if the Agency has not already done so, and to release the requested records to the Tribe immediately;

C. A judgment awarding the Tribe its costs and reasonable attorney's fees incurred in this action pursuant to 5 U.S.C. §552(a)(4)(E), 28 U.S.C. §2412, or other recognized ground in law or equity; and

D. Such other and further relief as the Court may deem appropriate.

Respectfully submitted this 30th day of July, 2015.


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